

Message Text

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PAGE 01 SAN JO 00884 202242Z

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ACTION XMB-04

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FM AMEMBASSY SAN JOSE

TO SECSTATE WASHDC 2938

LIMITED OFFICIAL USE SAN JOSE 0884

E.O. 11652: N/A

TAGS: EFIN, CS

SUBJECT: EXIMBANK: PRICE ADJUSTMENT FOR SAOPIM

REF: STATE 33995

1. PRESIDENT ODUBER HAS SIGNED A DECREE REJECTING THE REQUEST SUBMITTING BY SAOPIM FOR A 10.8 MILLION COLONES PRICE ADJUSTMENT IN THE COMPANY'S CONTRACT FOR THE LIMON HIGHWAY. THE DECREE, WHICH IS NO. 319, WAS PUBLISHED IN THE OFFICIAL GAZETTE ON FEBRUARY 11.

2. ACCORDING TO THE U.S. FHWA REP, WHO HAS BEEN IN TOUCH WITH SOURCES WITHIN THE MINISTRY OF PUBLIC WORKS ON THIS PROBLEM, SAOPIM'S ONLY RECOURSE NOW IS TO PROCEED THROUGH THE COURTS. ACCORDING TO SAOPIM'S CHIEF ENGINEER HERE, THIS IS WHAT THE COMPANY WILL DO.

3. THE BASIS FOR PRESIDENT ODUBER'S REJECTION OF SAOPIM'S REQUEST FOR A PRICE ADJUSTMENT IS A STATEMENT SIGNED BY SAOPIM RENOUNCING ANY RIGHT TO A COST ADJUSTMENT OTHER THAN FOR INCREASED COSTS OF MATERIALS. THE BASIS FOR AN APPEAL IN THE COURTS BY SAOPIM WOULD BE THAT THE GOVERNMENT HAS MADE CHANGES TO THE SPECIFICATIONS FOR THE ROAD AND THAT THE PRICE ORIGINALLY CONTRACTED NO LONGER REPRESENTS FAIR PAYMENT FOR THE ROAD ACTUALLY CONSTRUCTED. THEY WOULD ALSO BASE AN

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APPEAL ON THE FAVORABLE DECISION MADE BY THE CONTROLERIA.

ACCORDING TO SOURCES IN THE MINISTRY, THE TRUEVALUE OF
SAOPIM'S CLAIMS NOW APPROACHES \$3.4 MILLION.

4. IF THE EXIMBANK WISHES TO DEMONSTRATE ITS INTEREST
IN A FOVORABLE RESOLUTION OF THE SAOPIM CLAIM, THE
EMBASSY WOULD SUGGEST A JUDICIOUSLY WORDED TELEX TO
THE MINISTER OF PUBLIC WORKS, ALVARO JENKINS. SUCH A
CABLE MIGHT POINT OUT THE EXIMBANK'S INTEREST IN THE
CASE AND ASK FOR INFORMATION ON THE STATUS OF THE
MATTER. AT THE SAME TIME, EXIMBANK SHOULD BE AWARE THAT
SAOPIM IS VERY CONTROVERSIAL HERE DUE TO VARIOUS UNRELATED
SCANDALS. ACCORDINGLY, EXIM SHOULD MAKE CLEAR THAT IT IS
PROTECTING ITS OWN INTERESTS, NOT SAOPIM.
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